

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-127474

DATE: February 9, 1979

MATTER OF: Naval Supply Center - Annual leave adjustment

DIGEST: Agency erroneously applied Executive Order No. 11582, February 11, 1971, and designated Tuesday, February 21, 1978, as holiday "in lieu of" Washington's Birthday, February 20, 1978, for employees with Tuesday through Saturday workweek. Civil Service Commission subsequently ruled that 5 U.S.C. 6103(b)(2) (1976) was applicable and that proper "in lieu of" holiday was last workday prior to holiday. Agency paid employees holiday premium pay under 5 U.S.C. 5546 (1976) and charged annual leave for Tuesday, February 21, 1978. Since agency has found that leave charge under such circumstances constitutes unwarranted personnel action under Back Pay Act, 5 U.S.C. 5596 (1976), agency should restore annual leave charged.

This action is at the request of Rear Admiral J.E. McKenna, United States Navy, Commanding Officer, Naval Supply Center, Norfolk, Virginia. Admiral McKenna requests our decision as to the propriety of a ^{charge} ~~charge~~ to annual leave which is the subject of a grievance. We understand that incident to the grievance, which was brought by the International Association of Machinists and Aerospace Workers, an interim decision has been issued by the grievance examiner pending a ruling by this Office.

Incident to Washington's Birthday holiday, Monday, February 20, 1978, the Naval Supply Center, Norfolk, designated Tuesday, February 21, 1978, as the day the holiday would be observed by employees whose workweek was Tuesday through Saturday. The employees observed Tuesday, February 21, 1978, as the holiday but subsequently filed a grievance stating that the last workday of the previous week should have been designated as the holiday in lieu of Monday, February 20, 1978. The employees requested that they be paid holiday premium pay pursuant to 5 U.S.C. 5546 (1976) for the last workday of the previous week since they had worked that day, and they be granted administrative leave for Tuesday, February 21, 1978.

The Naval Supply Center requested guidance from the Civil Service Commission concerning which day was the proper day in lieu of the Monday, February 20, 1978, holiday. The Commission ruled that

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5 U.S.C. 6103(b)(2) (1976) was applicable and that under the law the proper day in lieu of the February 20, 1978, holiday was the last workday of the previous workweek. Thus, the Commission found that the Naval Supply Center was in error in applying the provisions of Executive Order No. 11582, February 11, 1971, in designating the first workday following the February 20, 1978, holiday as the "in lieu of" holiday. Thus, the Commission stated that the employees should be paid holiday premium pay if they worked the last workday of the previous week and should be charged annual leave for Tuesday, February 21, 1978. The Naval Supply Center paid the holiday pay and charged the employees annual leave for Tuesday, February 21, 1978.

The issue is whether the charge of annual leave for Tuesday, February 21, 1978, may be restored to the employees' leave accounts. Admiral McKenna states that the circumstances under which an agency may require an employee to take annual leave are limited. His analysis of the pertinent Commission and agency regulations leads him to believe that there is no authority to support a charge to annual leave for the employees' required absence on Tuesday, February 21, 1978. He notes that the employees were merely observing management's direction to observe the holiday on that day. His conclusion is that the charge of annual leave constitutes an unwarranted personnel action under the Back Pay Act, 5 U.S.C. 5596 (1976).

In order to recover under the provisions of the Back Pay Act, there must be a finding by appropriate authority that the employee has undergone an unjustified or unwarranted personnel action. In this case, Admiral McKenna has made the requisite determination.

The Civil Service Regulations implementing the Back Pay Act state that "pay" also means annual leave. See 5 C.F.R. 550.802(e). Also, there appears to be no authority for an agency to charge an employee annual leave to correct a management error in designating an employee's holiday. Accordingly, we hold that the Naval Supply Center should restore the annual leave which was charged to the employee's leave account for Tuesday, February 21, 1978, due to the agency's error in designating the "in lieu of" holiday for employees on a Tuesday through Saturday workweek.


Deputy Comptroller General
of the United States